



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,526	02/13/2002	Ken Shoji	36427-176973	4063

7590 01/20/2004

Venable
Post Office Box 34385
Washington, DC 20043-9998

EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 01/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/049,526

Applicant(s)

SHOJI ET AL.

Examiner

Susan T. Tran

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3-6 and 9-14.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ATTACHMENT

The amendment filed 12/24/03 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: newly submitted limitation "valerian oil *produced by an alkali treatment*" would require further consideration, as well as, new grounds of rejection. Accordingly, the amendment has not been entered.

Applicant indicated that the fact that the valerian oil produced by an alkali treatment is recognized by the Examiner (e.g., by citing Shoji et al. on pages 4, and 5). Contrary to the applicant's indication, the limitation was mentioned in the 102(b) rejection simply because it was the embodiment of Shoji's invention. It was noted that through out the prosecution, the fact that valerian oil produced by an alkali treatment has never been discussed.

The Declaration under 37 CFR 1.132 filed 12/24/03 is insufficient to overcome the rejections as set forth in the last Office action because: the Declaration does not establish that the presence of fatty acid in valerian oil would have a detrimental effect upon the desirability of reducing stress. Applicant's attention is called to page 2, 2nd and 3rd paragraphs, where the prior art teaches that the perfume/cologne composition reduces stress, increase calmness and happiness. Applicant has not provide a side-by-side comparison between the claimed invention and that of Warren. Table 1 of the Declaration showed nothing unexpected and/or unusual between the valerian oil of Tanida and that of the claimed invention.

Art Unit: 1615

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816 or (571) 272-0606 after 02/03/04. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927 or (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600